

(Draft - Awaiting Approval)

**MINUTES OF THE  
UTAH TAX REVIEW COMMISSION**

Thursday, November 10, 2016 – 2:00 p.m. – Room 445 State Capitol

**Members Present:**

Mr. Curtis Trader, Chair  
Sen. Jim Dabakis  
Sen. Lyle W. Hillyard  
Rep. Joel K. Briscoe  
Rep. Steve Eliason  
Rep. Daniel McCay  
Mr. Kelly J. Applegate  
Mr. Phil Dean  
Ms. Kathleen Howell  
Mr. Gregory G. Prawitt

**Members Excused:**

Sen. Deidre M. Henderson  
Ms. Emily D. Bagley  
Mr. K. Tim Larsen  
Mr. Troy K. Lewis  
Comm. John L. Valentine  
Mr. Lawrence C. Walters

**Staff Present:**

Mr. Bryant R. Howe, Deputy Director  
Mr. Leif G. Elder, Policy Analyst  
Ms. Andrea Valenti Arthur, Associate General Counsel  
Ms. Bree Frehner, Legislative Assistant

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Commission Business**

Chair Trader called the meeting to order at 2:22 p.m. Sen. Henderson, Ms. Bagley, Mr. Larsen, Mr. Lewis, Comm. Valentine, and Mr. Walters were excused from the meeting.

**MOTION:** Sen. Hillyard moved to approve the minutes. The motion passed unanimously with Sen. Dabakis absent for the vote.

**2. Pass-Through Entity Payment or Withholding of Tax**

Ms. Valenti Arthur distributed and explained draft legislation "Pass-Through Entity Amendments" (2017FL0556/002). She responded to questions from the commission.

Chair Trader provided background information concerning pass-through entity payment or withholding of tax. He discussed his view of draft legislation "Pass-Through Entity Amendments," his reasoning that the proposed change is good tax policy, and concerns with administration of the bill, as written, due to the costs and associated risks. Chair Trader responded to questions about why this issue is being considered currently and the fiscal impact of the bill. He explained that the \$250,000 threshold is included in the bill to keep the costs of auditing requests for refunds at a manageable level. He also provided examples of entities that face challenges under the current law and how they would benefit from the provisions of the bill.

Commission members discussed pass-through entity payment or withholding of tax and the proposed bill. Sen. Dabakis questioned why a change needs to be made. Sen. Hillyard discussed the process of measuring fiscal impact and stated that tax returns should be paid to the correct entity. Rep. Briscoe asked clarifying questions concerning the issue and changes in the bill.

Mr. Steve Young, attorney, Holland & Hart, spoke to the issue and the draft legislation. He noted that current state law creates a significant problem for a small group of taxpayers who are treated differently than other taxpayers. He reiterated that the refund permitted by the bill does not create any cost to the state because the only change would be to appropriately refund money that the state currently refunds at the incorrect tier. He commented on the administrative costs of the bill. He discussed the \$250,000

threshold, noting that although the best policy would be to not have a threshold, the threshold makes the bill administratively manageable. Mr. Young responded to questions from the commission.

Mr. Barry Conover, Executive Director, Utah State Tax Commission, discussed the work the Utah State Tax Commission has done on this issue. He distributed "Scope of Refund Request" and discussed the risk of fraud and the importance of auditing the transactions being discussed. He noted the cost of administering the necessary audits. Mr. Conover responded to questions from the commission.

Mr. Applegate noted that pass-through entities are not necessarily entitled to the refunds and mentioned concerns that the proposed policy is biased toward high-income taxpayers. He encouraged a realistic view of the administration costs. He stated that he opposes the bill currently.

Chair Trader discussed "The Ten Guiding Principles of Good Tax Policy," as adopted by the American Institute of Certified Public Accountants, particularly noting how the principles apply to the bill.

Mr. Dean stated that he is not comfortable supporting the bill due to administrative costs and other fiscal issues.

Ms. Howell discussed her experience with auditing. She stated that although there is a problem that needs to be addressed, she does not think this bill is the way to fix it.

Mr. Prawitt commented that the bill deals with a very small population of taxpayers. He noted that the \$250,000 threshold seems to be for nothing other than convenience. He stated that he is not sure the bill is the solution to the problem.

Sen. Hillyard noted problems with the \$250,000 threshold, stating that, absent a significant cost differential that would justify a threshold, any taxpayer who is entitled to a refund should receive a refund.

Rep. Eliason discussed fiscal issues introduced by the bill. He stated that expediting refunds would create a cash-flow problem. He mentioned concerns about the bill, especially without seeing a fiscal note.

Rep. McCay stated his view that the bill would result in the state settling disputes that businesses could handle with foresight and good legal work. He said that he does not support the bill currently.

Rep. Briscoe discussed the bill and said he does not support it currently.

Mr. Young discussed the process undertaken with the Utah State Tax Commission to arrive at the current bill, noting why certain provisions that cause concern are included. Mr. Conover also spoke about the process, noting that commissioners have provided input but the bill has not been approved by the commission as a body.

The commission did not take action on the draft legislation.

### **3. Sales and Use Tax Exemption for Purchases of Manufacturing Equipment**

This agenda item was not discussed.

### **4. Other Items/Adjourn**

Chair Trader thanked the commission members for the work they have put in over the 2016 interim.

Sen. Hillyard recommended that Chair Trader ask the Revenue and Taxation Interim Committee if the committee would like the commission to continue to study the issues that the commission has studied over the 2016 interim.

Chair Trader adjourned the meeting at 4:14 p.m.